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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 833 (SHS)

5 ANTHONY CHEEDIE, et al.,

6 Defendants.

7 -----x

Teleconference

8 July 7, 2020

4:05 p.m.

9 Before:

10 HON. SIDNEY H. STEIN,

11 District Judge

12
13 APPEARANCES

14 AUDREY STRAUSS

Acting United States Attorney for
the Southern District of New York

15 BY: KIERSTEN A. FLETCHER

16 BENET J. KEARNEY

ROBERT B. SOBELMAN

17 Assistant United States Attorneys

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Attorney for Defendant Cheedie

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Attorney for Defendant Brewster

25 BY: RYAN P. POSCABLO

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APPEARANCES
(continued)

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Attorney for Defendant Cirilo

BY: MARK I. COHEN

GILLIAN M. FEEHAN

ALSO PRESENT:

Emma M. Greenwood, Coordinating Discovery Attorney

Special Agent Marcus Murphy, Homeland Security Investigations

Detective Christopher Bastos, HSI Task Force

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names
3 for the court, and let Judge Stein know whether your client is
4 present as well.

5 THE COURT: All right, ladies and gentlemen, before
6 you do that, because there are so many counsel, I will call the
7 names off, so we don't have a lot of people speaking over each
8 other. And if that attorney is present, he or she should say
9 they are present and whether or not their client is present as
10 well and if the client is not present, whether or not that
11 client waives his or her appearance.

12 The purpose of today's conference is to hear the
13 status of discovery. I have received a letter from
14 Ms. Greenwood that was filed under seal, but I do want to hear
15 her report, and also to see where we are going, that is, the
16 schedule for the rest of the proceedings. I do want to have
17 this case move forward to the extent possible. Obviously we
18 are in the midst of a pandemic and everybody is scattered, but
19 nonetheless the Southern District is functioning quite well and
20 we should move this case forward.

21 So let's start. For the government, who do we have?

22 MS. FLETCHER: Good afternoon, your Honor. You have
23 Kiersten Fletcher, Benet Kearney, and Robert Sobelman from the
24 government, and we are joined by two case agents on this case,
25 Detective Christopher Bastos and Special Agent Marcus Murphy.

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1 THE COURT: All right. Good afternoon to all of you.

2 Ms. Greenwood, are you present?

3 MS. GREENWOOD: Yes, your Honor. Good afternoon.

4 Emma Greenwood, the coordinating discovery attorney.

5 THE COURT: Good afternoon. And I noticed you have a
6 nifty new logo on your correspondence, Ms. Greenwood. It's
7 green, and it's green for wood, and there is like a block so it
8 looks like it's wood. I thought it was very well done.

9 And for the defendants, do we have Mr. Sosinsky?

10 MR. SOSINSKY: We do, your Honor. Fred Sosinsky. My
11 client, Anthony Cheedie, is on the call as well. Good
12 afternoon, sir.

13 THE COURT: Good afternoon.

14 And although this does not -- it is relevant just to
15 you, Mr. Sosinsky, we have a *Curcio* hearing and a bail issue on
16 July 15 at 3:30 hopefully in Courtroom 23A. There is some
17 construction being done in that courtroom, as in most
18 courtrooms, to accommodate social distancing and so forth, and
19 it should be done by July 15.

20 This is for everybody. I don't know whether you are
21 aware of it, but on the morning that you are going into court,
22 it is easiest if you log on to the Southern District website.
23 There is a short questionnaire for you to fill out, and after
24 you fill it out, you then will receive a QR code. You go into
25 the courthouse, and in each entrance there will be readers.

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1 You put your QR code up to the reader, and it will read your QR
2 code. It will take your temperature. Perhaps it will give you
3 breakfast. And presumably if you have done everything that you
4 have to and you don't have a temperature, you then will be
5 allowed to pass through. You can fill out the questionnaire at
6 the courthouse itself, but it just makes it a lot easier and
7 will save time for everybody if they fill that questionnaire
8 out on their mobile device before coming to the courthouse.
9 The QR code is valid for one day, multiple entrances, but one
10 day. That all, of course, is relevant at this time only to
11 Mr. Sosinsky and Mr. Cheedie.

12 I should also say that this is being recorded and that
13 it's a public line. I was told by the computer that there are
14 30-some-odd people on, so I think we can assume that members of
15 the public of course are always invited on this line as well.
16 Please speak slowly, clearly, and pause after you speak so that
17 I can say whatever I want to say.

18 Mr. Foy, are you present, sir?

19 MR. FOY: May it please the Court, Jason Foy for
20 Mr. Chad Allen. Also present with me is associate counsel Eric
21 Sarraga. Mr. Allen, with the permission of the court, will
22 waive his appearance.

23 THE COURT: Yes, of course.

24 Mr. Rosenberg, are you present?

25 MR. ROSENBERG: Yes, I am. Good afternoon, your

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1 Honor. My client, Shane Hanna, is on the line as well, your
2 Honor.

3 THE COURT: All right. Good.

4 Mr. Poscablo?

5 MR. POSCABLO: Good afternoon, your Honor. Ryan
6 Poscablo on behalf of Mr. Brewster. And with the court's
7 permission and with my client's consent, we respectfully
8 request that your Honor waive his appearance today.

9 THE COURT: Granted.

10 Ms. Perry.

11 MR. GUHA: This is Samidh Guha on behalf of Kevin
12 Handren. Ms. Perry is my partner at the firm. My colleague
13 George Barchini is also on the call with me and Mr. Handren is
14 present on the line as well.

15 THE COURT: All right. Welcome, Mr. Guha. Thank you.

16 MR. GUHA: Good afternoon, your Honor.

17 MS. FRIEDLANDER: Good afternoon --

18 THE COURT: Ms. Friedlander.

19 MS. FRIEDLANDER: -- your Honor. Hi, your Honor.
20 Nicole Friedlander, Maeghan Mikorski, and Trevor Chenoweth for
21 Joseph Ciaccio. Mr. Ciaccio is not on the phone today and he
22 waives his appearance. He is in a long-term rehabilitation
23 facility and quite ill, as your Honor may recall, so --

24 THE COURT: All right. Thank you.

25 Mr. Sporn.

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1 MR. SPORN: Hi. I'm present, your Honor. Thank you,
2 and good afternoon. And Mr. Minetto, my client, is present on
3 the line as well.

4 THE COURT: All right. Welcome.

5 Mr. Margulis-Ohnuma.

6 MR. MARGULIS-OHNUMA: Good afternoon, your Honor. I
7 am present, accompanied by my associate attorney, Victoria
8 Medley, and my client Joseph Depaola is on the line. Good
9 afternoon, Judge.

10 THE COURT: Good afternoon.

11 Mr. Neary.

12 MR. NEARY: Good afternoon, Judge. This is Brian
13 Neary. I am appearing today on behalf of Derrek Larkin, and
14 Mr. Larkin has joined us on the telephone call.

15 THE COURT: All right. Good afternoon.

16 Mr. Cohen?

17 MR. COHEN: Good afternoon, your Honor. Mark Cohen,
18 and my associate Gillian Feehan is on the line, and Mattie
19 Cirilo, my client, is also on the line with us.

20 THE COURT: All right. Good afternoon to everybody.

21 Let's first hear a summary of the discovery so far
22 from the coordinating discovery attorney, Ms. Greenwood. As I
23 said, I have read your letter, Ms. Greenwood, but let's put on
24 the record, it looks like actually things are moving forward
25 apace. It also looks like there is a substantial amount of

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1 discovery in this matter, and I can't tell a bit from a byte,
2 but it sounds like lots of bits and bytes. So why don't you
3 tell me what you want everybody to know.

4 MS. GREENWOOD: Thank you, your Honor. To date, my
5 office has received five global discovery productions, two of
6 which were produced since the last time we all met in your
7 Honor's courtroom. The volume of the material received since
8 the last conference is about 60 gigabytes of data and, to put
9 that in context, we have received overall about 160 gigabytes
10 of data. So we have received quite a bit since we saw your
11 Honor last.

12 Those productions produced since the last conference
13 have been made available to defense counsel. My office worked
14 quite extensively with the government, in particular on the
15 latter production, with a number of space issues and things
16 like that that we were able to quickly resolve.

17 There remains one issue with a subset of files that
18 were produced in a format called PDF. These files were also
19 produced in another file format called a load file format,
20 which is a --

21 THE COURT: I think what you said in your letter was
22 some of the PDF format wasn't received, but people were working
23 on that and it should be no problem, is that correct?

24 MS. GREENWOOD: Right. We are awaiting from the
25 government a subset of PDF files which maybe the government

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1 will speak to as to status. But as of today my office is not
2 in receipt of those problematic files. However, the same -- my
3 understanding is the same files were produced in another
4 format, load file format, which is in my possession and is
5 accessible by defense counsel that have access to the online
6 database.

7 Besides that, just in terms of numbers, a little bit
8 of context. We have about close to 800,000 files in this
9 discovery overall, which includes both the Cheedie discovery as
10 well as the discovery that was produced in the earlier Ketabchi
11 matter, and of that volume, almost 650,000 of those are
12 e-mails. So we have been working with defense counsel to help
13 them review the material and, again, working closely with the
14 government to resolve any issues that remain.

15 THE COURT: All right. Well, thank you. If I can
16 summarize and characterize, everything you have been given so
17 far in terms of global discovery has been processed and made
18 available in at least one acceptable format to all defense
19 counsel. Is that fair?

20 MS. GREENWOOD: That's fair, your Honor. I should
21 mention just for the record that court-appointed counsel have
22 access to everything my office produces or, I should say,
23 distributes. Retained counsel must pay a cost share for their
24 access to the online database, for example, so not everyone has
25 access to the database.

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1 THE COURT: But if they share -- if they put in their
2 proportionate share, they do have access, and that's for
3 retained counsel.

4 MS. GREENWOOD: That's correct, your Honor.

5 THE COURT: All right. That's fine.

6 Government, what would you like to say? And who is
7 going to say it? Please, everyone introduce themselves before
8 they speak so the court reporter knows who is speaking.

9 MS. FLETCHER: Will do. This is Kiersten Fletcher,
10 your Honor, and I suspect, unless I say something wrong, I will
11 be speaking on behalf of the government for the remainder of
12 the conference.

13 Everything that Ms. Greenwood just set forth is
14 correct. With respect to the issues related to several of the
15 PDF documents that Ms. Greenwood flagged, my understanding is
16 that that issue relates to documents that were seized in hard
17 copy and that were sent to a vendor for purposes of scanning,
18 and we have not been able to resolve that issue in part because
19 the scanning has been suspended as a result of the pandemic.

20 The government has seized approximately 23 boxes of
21 documents and sent those documents to a vendor for scanning.
22 The vendor has ceased operating as a result of the pandemic and
23 has been unable to give us an estimate as to when they will be
24 operational again. So we are in the process of trying to find
25 another vendor that is operating at this time. Of those 23

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1 boxes, we were able to produce the eight that had already been
2 scanned, but there are 15 boxes of documents that have not been
3 scanned and as of yet not produced.

4 The vast majority of the discovery in this case has
5 been produced. Your Honor, we expect to make a small
6 production later this week; and when I say "small," I mean in
7 the three- to five-gigabyte range. That production will
8 include some bank records that have come in over the course of
9 the few months since the last conference as well as business
10 records that we have received related to a couple of the
11 different telemarketing companies that are at issue in this
12 case. So that is the update with respect to the nonelectronic
13 devices discovery.

14 If the court would like, I can go on and address the
15 status of the imaging and preparing of reports for the
16 electronic devices that were seized.

17 THE COURT: No. Before you do that, let me probe a
18 little on the scanning. Has this company essentially just gone
19 out of business or is it because it is in a state where the
20 phase, whatever phase the state is in does not allow that
21 company to be functioning? In other words, to what extent is
22 it actually dead in the water?

23 MS. FLETCHER: It's the latter, your Honor. It's our
24 understanding that the employees of the vendor are not
25 permitted to go to work right now but that the business is

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1 still operational or will -- I think they hope be operational
2 when the pandemic ends.

3 THE COURT: All right. Well, you should be -- I'm a
4 little surprised to hear that. I think it would depend on the
5 various phrases. But you should take whatever steps needed to
6 get these things scanned, whether it is through this company or
7 another company. All right?

8 MS. FLETCHER: Yes. And so, your Honor, we have tried
9 to do that with this company. We were under the impression, I
10 think, initially that they would be able to return to work and
11 resume the scanning and we would not need to move the documents
12 to another vendor. But the passage of time has made clear that
13 we cannot continue to wait, and so we are working to get the
14 boxes back to our office and transferred to another vendor who
15 can work on them.

16 THE COURT: All right. Please do that expeditiously.
17 Let's move on now to the numerous, I think
18 80-some-odd, or more, perhaps, electronic devices.

19 MS. FLETCHER: Yes. Quite a bit more, your Honor.
20 The government has produced, as we did with the prior case, a
21 list of the electronic devices that we have that were seized
22 and have noted on that spreadsheet, that list, what devices
23 have been imaged and the reports that were prepared for those
24 devices. We have made available to date more than 100
25 electronic devices and, as we did with the prior case, informed

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1 counsel that to the extent that any of the counsel wish to have
2 a copy of the image of an electronic device or the report
3 associated with that image, that we will prepare and produce
4 those devices upon request.

5 There are still certain categories or certain buckets
6 of devices that remain outstanding. There are approximately
7 ten devices taken from the search warrant conducted on the
8 Englewood, New Jersey, telemarketing floor. Those devices have
9 not been imaged or certain devices have been imaged but a
10 report is not yet ready. There are approximately six devices
11 outstanding from the search of the home of defendants Derek
12 Larkin and Mattie Cirilo. And there are several devices that
13 were seized from the Florida office operated by Jason Sager.
14 None of those devices were used by any of the defendants in
15 this case. But to the extent that they were used by
16 salespeople working for Jason Sager, who is a coconspirator of
17 many of the defendants charged in this case, the government is
18 looking through those devices.

19 There are two other categories of devices that we
20 wanted to raise with the court and address.

21 So the first category, as the court is aware, there
22 was a search warrant or a search conducted of a telemarketing
23 sales floor in Arizona after the defendants in this case were
24 charged. That search yielded approximately 38 electronic
25 devices. Those devices have not yet been imaged and have not,

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1 as a result, been analyzed, and there are not yet reports
2 prepared for those devices.

3 There is also approximately 15 devices that were taken
4 from -- perhaps I should take a step back. Your Honor, I
5 referenced earlier that there was a search warrant executed at
6 a sales floor in Englewood, New Jersey. That is the sales
7 floor that was -- that operated Corporate Development Center
8 and Alliance Education, one of the companies at issue here.
9 When the agents conducted that search, it actually -- it turned
10 out that there were two separate businesses or two separate
11 offices operating within the same location. The second office
12 is a -- was a medical device sales company, and 15 of the
13 electronic devices that were taken were actually taken from
14 that medical device company. The government has not imaged
15 those devices and has not prepared reports for those devices.
16 At this stage the government does not intend to, because it
17 appears that the evidence that is likely contained on those
18 devices would not be evidence of the telemarketing scheme or
19 the business opportunity scheme as it is charged. So while we
20 have made defense counsel aware that we have those devices, no
21 one has asked for them and we, at this point, given the large
22 volume of other devices that have yet to be imaged, do not
23 intend to image those devices.

24 And so our current understanding, your Honor, as might
25 not be a surprise, is that the Homeland Security investigation

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1 operates a lab that has been imaging and preparing the reports
2 for these devices. As a result of the pandemic and as a result
3 of regulations that have been imposed by the agency, they are
4 operating far more slowly than they were pre-pandemic. Our
5 current understanding is that the lab is able to process
6 approximately three devices per week for our case, and so our
7 current estimate is that, assuming than continues to be the
8 case going forward, that the government will be in a position
9 to have images and reports for the devices that remain
10 outstanding from the Englewood, New Jersey, search warrant and
11 from the search of the residence of Derek Larkin and Mattie
12 Cirilo in approximately six weeks and then will -- and the lab
13 will then be directed to prioritize the devices that were
14 seized in connection with the search warrant in Arizona earlier
15 this year and, after that, to continue to analyze the Jason
16 Sager office devices.

17 Of course if any defense counsel has any reason to
18 think that certain devices from Arizona or from the Florida
19 sales floors contain evidence that they would like to see more
20 expeditiously, we are happy to rejigger our attempts at
21 priority, but that's how we intend to do it going forward.

22 THE COURT: All right. And obviously if any defense
23 counsel wants to respond to that invitation from Ms. Fletcher,
24 they should do so individually.

25 So what are we talking about here, Ms. Fletcher? You

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1 are talking about six weeks to get the images and their reports
2 from Englewood, New Jersey, and Larkin and Cirilo, and then you
3 are going to do Arizona and then you are going to do Sager. Do
4 we have a ballpark of when it is going to be done.?

5 MS. FLETCHER: Your Honor, just doing the math, I
6 think if we -- if we collect the Arizona, the 30 devices
7 outstanding from Arizona and the 23 from Jason Sager's floor, I
8 think what we would be looking at is -- that's approximately 60
9 devices, at three devices per week, that's 20 weeks, so that's
10 five months.

11 I am hopeful that it won't take that long because I am
12 hopeful that the pace at which the lab is able to analyze this
13 data will increase as the city continues to open up. But as
14 with defense counsel on this call, I think we are all unable to
15 predict exactly how that reopening plan is going to go.

16 I will say, your Honor, with respect to the Jason
17 Sager devices, you know that's approximately half of the
18 devices that are going to be outstanding once the six weeks
19 come up for the Englewood, New Jersey, and the Larkin devices.
20 The devices that we understand -- I'm sorry, the devices that
21 we understand were used by Jason Sager and by his office
22 manager as it were, those devices have been imaged and reports
23 are prepared. So the devices that remain outstanding are those
24 that were used by salespeople who worked for Mr. Sager. Our
25 current understanding of the way that these floors operated is

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1 that there was no interaction between the salespeople working
2 for Mr. Sager and the defendants that are charged in this case,
3 and so the likelihood that those devices contain material that
4 would even qualify as Rule 16 we think is pretty low. But of
5 course we are going through the devices and imaging them and
6 conducting an analysis, both to assure ourselves of that and to
7 ensure that we are complying with our other disclosure
8 obligations.

9 So that is all to say, your Honor, I think it is going
10 to take some time to get through all of these devices, but once
11 the six weeks -- once the period beginning now and ending six
12 weeks from now concludes, I suspect every defendant in this
13 case will have at least access to any electronic device that he
14 or she potentially used or that those individuals working in
15 his or her office used.

16 And I would just note that -- no, that's all, your
17 Honor.

18 THE COURT: All right. I'm trying to think this
19 through. Nobody is incarcerated in this proceeding, is that
20 correct? We have the separate issue of Mr. Cheedie coming up
21 next week, but apart from Mr. Cheedie, there is no expectation
22 that anybody here will be or is incarcerated, is that correct?

23 MS. FLETCHER: Putting aside the issue with respect to
24 Mr. Cheedie, yes, your Honor.

25 THE COURT: That takes the legal pressure off me to go

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1 to trial since they are not incarcerated.

2 What is the position of the government on the ability
3 of defendants to make appropriate motions starting after the
4 six weeks, that is, I think I heard the representation from the
5 government that any device that was used by any defendant, and
6 certainly all of the Ketabchi discovery will have been produced
7 within six weeks, and the only thing that's outstanding at that
8 point is the Arizona and Sager devices, is that correct?

9 MS. FLETCHER: That's correct, your Honor. And so I
10 guess with one qualifier on my prior statement, the sales floor
11 that was searched earlier this year in Arizona was a sales
12 floor that the government understands was operated primarily by
13 defendant Chad Allen, and so until the search warrant affidavit
14 for that search and the fruits of that search are proposed,
15 Mr Allen would be unable to make a motion with respect to that
16 search. But certainly Mr Allen and the remaining defendants
17 would be able to make any motions with respect to other devices
18 seized from them either at the time of the November 2019 arrest
19 or prior thereto.

20 THE COURT: And you also did not deal with the
21 possibility, because it's the known unknown, that the pandemic
22 may ease and things will open up.

23 MS. FLETCHER: That's correct, your Honor. It is a
24 known unknown. But certainly --

25 THE COURT: All right. Let me hear from anyone who

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1 wants to speak on the defense, because what I am thinking of
2 is, because everyone wants this to get moving, I think justice
3 would have it start to move, is that we set a time by which the
4 defense will make any motions, and it will start at six weeks.
5 In other words, the analysis -- your analysis of the discovery,
6 the clock will begin and you will have, say, a month to make
7 motions. And if there is later discovery that would have
8 relevant motions, I'm not going to stop you from making those
9 motions, but it would be limited to the discovery subsequent to
10 what we will call six weeks. It seems to me that's the way to
11 proceed.

12 Let me hear from anyone on the defense who wants to
13 speak to that. And I will give adequate time, but I don't
14 think it is responsible to wait until all of these things are
15 imaged and produced for the defense to begin thinking about
16 motions.

17 Who would like to speak from the defense, if anyone?

18 MR. COHEN: Judge, Mark Cohen, on behalf of
19 Mr. Cirilo, just for a question?

20 THE COURT: Yes, sir.

21 MR. COHEN: Judge, in large cases such as this in the
22 district in the past, it's been my experience that, especially
23 with the imaging that's going to occur on those devices that we
24 are waiting approximately six weeks for, might the government
25 consider notifying the defense as to whether or not it intends

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1 to use evidence seized from those devices? For example, if the
2 six devices are of little importance to the government, why
3 make us make motions on those? I'm curious to know if the
4 government might undertake that.

5 THE COURT: Government, Ms. Fletcher.

6 MS. FLETCHER: Your Honor, I think, given the volume
7 of electronic devices that we have, I'm not sure that's
8 possible, certainly not at this stage, and certainly not at a
9 stage, you know, prior to which the motion would likely be due
10 under your Honor's proposed schedule. There are certain
11 devices we could articulate now, your Honor, that have evidence
12 that we would intend to use, but we certainly at this stage
13 couldn't be exhaustive and therefore couldn't necessarily moot
14 a motion. It seems to the government, your Honor, that any
15 motions with respect to an electronic device, for example,
16 would go to the suppression of numerous devices seized in
17 connection with any particular search, and the basis for that
18 motion, if there was one, would be on the face of the search
19 warrant affidavit. So it is not clear to me that what
20 Mr. Cohen is proposing actually is even possible or would
21 necessarily save him the level of work that I think he is
22 trying to save himself.

23 MR. COHEN: Well, I am really trying to save the
24 crunch time after we get six devices coming up. I'm aware of
25 what might be on the devices that are already imaged, but I am

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1 concerned about the unknown. So that's the reason for the
2 question.

3 THE COURT: Ms. Fletcher, I assume your investigation
4 is still ongoing, since you haven't imaged the devices, but I
5 would think in good faith there are certain devices that you
6 know are going to be of essentially no value to you or of
7 marginal value, and such a statement, while not binding on the
8 government, as long as it is made in good faith, would
9 certainly help guide the defense in how they should prioritize
10 thinking about these devices and their motions.

11 MS. FLETCHER: Of course, your Honor. And to the
12 extent the government, in the course of its review, determines
13 that certain devices are unlikely to be relied upon, we are
14 happy to engage in a good-faith discussion with defense counsel
15 on that basis.

16 THE COURT: All right. I am directing you to do so.
17 Exactly.

18 Anyone else from the defense?

19 MR. POSCABLO: Your Honor, this is Ryan Poscablo on
20 behalf of Cameron Brewster.

21 You know, I agree with everything that Ms. Fletcher
22 said with regards to the scope of discovery that has been
23 produced that Ms. Greenwood's office has placed into CasePoint,
24 but we haven't spoken too much about devices that were seized
25 and the amount of data that is actually in those devices could

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1 far surpass what has already been loaded into CasePoint. And I
2 think even if the government were able to have a good-faith
3 discussion with us at this point as to what they think -- where
4 the relevant devices are, given that some of them haven't even
5 been imaged, I doubt they are in a position to say that they
6 intend to use a particular cell phone or a particular computer
7 at this point, because they probably haven't had a chance to
8 review that yet. If they haven't, it means that we haven't it.
9 I know that we have been working -- my office has been working
10 very hard to get through the materials that are in CasePoint,
11 and we will turn our attention next to over two dozen devices
12 that were seized that are somehow connected to and might even
13 be more to Mr. Brewster. I guess what I am saying is I am
14 requesting a little more time than six weeks, because we are
15 going to need to get through that first to determine what is in
16 there and what would be the basis for a motion to suppress
17 anything that was seized in there.

18 THE COURT: I'm not sure I understand, Mr. Poscablo.
19 You are saying you are hard at work on the CasePoint files that
20 have already been turned over, the global discovery that's
21 already come up, and therefore you are going to need time
22 beyond the simply six weeks that the government has projected
23 as the bulk of material coming in. Is that what you are
24 saying?

25 MR. POSCABLO: Slightly, Judge. What I am saying is

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1 the government has made available to all the defense lawyers
2 the items that were seized pursuant to search warrants on the
3 date of the takedown. I guess what I am saying is the amount
4 of data that is in those devices is -- may surpass the amount
5 of data that they have already produced.

6 THE COURT: I understand that, but what do you draw
7 from that?

8 MR. POSCABLO: I guess I am just asking for more time,
9 your Honor, because we haven't had a chance to touch on that
10 and review those materials yet, and before we can credibly
11 assess what types of motions, if any, we would file, we intend
12 to file, we would at least have to look at those devices, the
13 images of those devices. So I'm just asking for more time,
14 Judge, than six weeks.

15 THE COURT: More time than what? I thought I was just
16 basically setting forth a way to proceed. What more time than
17 what?

18 MR. POSCABLO: I had -- maybe I misunderstood, your
19 Honor. I understood what you are saying was that within six
20 weeks defense counsel were supposed to file motions. If I
21 misunderstood that, I apologize.

22 THE COURT: No, no, no. I was saying I would set
23 something like a month from six weeks --

24 MR. POSCABLO: Oh.

25 THE COURT: -- waiting for the devices to come over

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1 and then presumably you are working on, and you have indicated
2 you are already in this case profile, and then a month after
3 the six-week deadline for motions to be made. That's what I
4 was positing.

5 MR. POSCABLO: Oh, I didn't understand.

6 MR. COHEN: Judge, Mark Cohen, again. If I might just
7 to ride on the coattails of Mr. Poscablo for a second, my
8 concern I think is sort of a hybrid. One is that I think that
9 all of us, because we all spoke via Zoom -- or not all of us,
10 but most of us spoke via Zoom yesterday. One concern that we
11 have not articulated, I guess, or that hasn't had sufficient
12 air time is the amount of time that we have with our clients
13 during the pandemic to date, some people -- not Ms. Cirilo, who
14 lives locally, but some people live far away, and our concern
15 collectively is having enough time to go through what has
16 already been produced.

17 And then I want to re-articulate my concern that if
18 your Honor is telling us that motions are due a month after
19 they expect to get Mr. Neary and I six devices for our two
20 clients, I just think that that's cutting it very close. And
21 I'm fully aware of the fact that we all need justice to occur
22 at a good pace, but also not at the expense of us doing the
23 sort of job we need to do in such a paper-intense case as well,
24 your Honor.

25 (Indiscernible crosstalk)

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1 THE COURT: Who was speaking?

2 MR. MARGULIS-OHNUMA: Sorry. I wasn't trying to cut
3 in. It is Zach Margulis-Ohnuma.

4 THE COURT: All right. Cut in.

5 MR. MARGULIS-OHNUMA: I think what we are missing here
6 is we need an interval after the discovery is complete, and we
7 will of course do it on a rolling basis, but if everything
8 really is in in six weeks, we need time -- it's very
9 voluminous. We need time to review it and then we need about a
10 month for motions. So I would propose another six weeks after
11 the government's discovery is complete, and maybe even another
12 conference to make sure that the discovery is complete.

13 THE COURT: No. I understand. Now I'm going to
14 interrupt.

15 MR. MARGULIS-OHNUMA: Just for the review in addition
16 to the motion drafting.

17 THE COURT: I understand the defense would obviously
18 like more time rather than less on everything. I am not -- and
19 I am trying to do something that makes sense and, again, it is
20 a little hard to get a sense of the volume here. However, I do
21 know from the Ketabchi case that there is just enormous
22 sections of the electronic devices that have absolutely nothing
23 to do with the criminal proceedings. There just is no point in
24 anybody looking at them. Now, obviously, you have to make that
25 decision yourself. These things fit into certain patterns, and

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1 I have no reason to doubt that's not true here, because these
2 things allegedly are intertwined product and sales floors
3 different sales floors, different people. But I am led to
4 believe it is essentially the same conspiracy, if I'm not
5 mistaken. So you have a heads up on that.

6 Secondly, I am not at all sympathetic to I think it
7 was Mr. Cohen saying that because of the pandemic it's hard to
8 find time with your clients. Ladies and gentlemen, what I have
9 been dealing with is people who are incarcerated, where it is
10 really hard, and that there are no legal visits or at least
11 there weren't as of last week, and people are given, you know,
12 a very short amount of time to review electronic discovery in
13 their unit. Those are issues. I don't see it as an issue when
14 you have somebody who is not incarcerated, even if the people
15 are in different places. Certainly compared to those who are
16 incarcerated, it is quite easy to be reviewing the discovery.

17 So this is what I intend to do:

18 Conditions are not ideal now certainly and I certainly
19 hope everybody is safe and healthy. We are going to have six
20 weeks for the production of the electronic devices that were
21 set forth by the government. I am going to provide, then, for
22 ten weeks after that, which is plenty -- no, no, no, I'm sorry,
23 two months would be eight weeks, eight weeks after that, which
24 is more time than I would like, but we are in a pandemic, for
25 motions to be made. My guess is that they will fall into a

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1 pattern. And to the extent people want to sign on to other
2 motions, that's best for everybody. Two weeks after that for
3 the government to respond, and then two weeks for reply. If it
4 does turn out that there is a massive amount of briefing, I
5 will give the government more time. Something tells me that
6 everything will be concentrated.

7 Now, Ms. Fletcher, on the record, the definition of
8 what you believe will come in within six weeks because I don't
9 want to misstate it.

10 MS. FLETCHER: Thank you, your Honor.

11 In addition to the modest production that I described
12 earlier that we will be making this week, the government
13 expects to make available within six weeks the images and
14 reports for the electronic devices that were used at the home
15 of Derek Larkin and Mattie Cirilo as well as the electronic
16 devices that remain outstanding from the Corporate Development
17 Center office in Englewood, New Jersey.

18 And for the sake of clarity in the record, the office
19 in Englewood, New Jersey, was split into two parts. The
20 government intends to image and make available reports of the
21 devices seized from the business opportunity telemarketing
22 floor, but not from the telemarketing floor that was involved
23 in medical device sales.

24 THE COURT: All right. So Ms. Blakely, could you set
25 forth on the record the dates as I have set them? We are going

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1 to have six weeks from now for the production of those devices
2 by the government and a resulting order will set it forth, if
3 we get a transcript, and then eight weeks for the motions,
4 defense motions, and then two weeks and two weeks. I guess we
5 don't have to put the actual dates on the record, Ms. Blakely.
6 You and I will compute it after this conference and we will get
7 an order out.

8 THE DEPUTY CLERK: Okay.

9 THE COURT: All right? Is there anything else?

10 And of course I am just assuming discussions are going
11 forward between the parties because normally a case like this,
12 with all of these defendants, not everybody is going to go to
13 trial. Obviously I don't have any particular knowledge, but
14 that's -- I have experience. And if people are going to drop
15 out, that makes it easier for everybody to move the case
16 forward. I'm not advocating it, I am just saying keep that, as
17 part of what you are doing, keep the line of communications
18 open.

19 All right. I will set another conference date when I
20 get these dates in my mind set on paper. We will get a
21 specific order out as well, and if anyone needs me for
22 anything, you can always write a letter and I will bring you in
23 for a conference.

24 If there is anybody who needs anything else, he or she
25 should set that forth now or hold their peace for this

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1 conference. Anyone?

2 (Indiscernible crosstalk)

3 MS. FLETCHER: Your Honor just briefly from the
4 government, but I am happy to wait my turn.

5 (Indiscernible crosstalk)

6 THE COURT: There were two voices. Who else?

7 MS. MEDLEY: This is Victoria Medley. I'm the
8 associate for Zachary Margulis-Ohnuma for Joseph Depaola.

9 I wanted to make sure as far as the outstanding
10 scanning documents are concerned, when those do come in and we
11 go through them, if for whatever reason we then determine that
12 an earlier motion needs to be expanded because of new
13 information we find, I just want to make sure we will be able
14 to do that even if it is related to the motions that were
15 already produced.

16 THE COURT: I'm not sure I understand that. I
17 certainly don't want multiple motions with the same things.
18 You will have to restate that.

19 MS. MEDLEY: Right. So if we get some of the -- if
20 we -- for the boxes that are scanned and we get those
21 documents, if we find anything in them that reveals that
22 something we have already litigated in a prior motion, you
23 know, now has a further basis for exclusion or some other
24 motion, I just want to make sure that we will be able to do
25 that if new information arises.

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1 THE COURT: No. I understand what you are saying.
2 No, I'm not going to say that. The idea is if a device is
3 given to you, it's scanned, the information is given to you,
4 you are going to make whatever motion you deem appropriate on
5 the basis of the information you have been given. No, you
6 can't go back half a year later and make a motion over
7 something that has long since been produced.

8 All right. Anything else? Government, you were
9 saying?

10 MS. FLETCHER: Yes, your Honor.

11 Your Honor, as your Honor indicated, the parties
12 are -- certain parties are in discussion with the government,
13 and so we are hopeful that we don't have a ten-defendant trial.
14 But we do understand, based on trials that have been scheduled
15 in other cases in this district, that there may be quite a
16 backlog of cases that need to be set for trial come spring of
17 next year, and so the government was hoping to request that
18 your Honor set a trial date at this conference even if it is to
19 secure our place in line at some point. The government was
20 thinking in the second quarter of 2021.

21 THE COURT: I am not going to do that now. There is a
22 heavily negotiated protocol that is about to issue from the
23 court or will issue at some point. It is under discussion now.
24 It has plenty of subparts so that everybody's eyes will be
25 crossed when they try to figure it out, and it deals with the

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1 priority of trial. I don't think we have to get into that now.
2 I actually think that there is a possibility that there will be
3 no backlog, but let's take it as it comes. I'm not going to
4 set a trial date now. It doesn't matter. Of course it
5 matters, but I don't think there is a necessity to set a trial
6 date now, and I do feel that we can get the precedence that's
7 appropriate for this court when it is ready for trial.

8 All right. Well, thank you all.

9 A VOICE: Your Honor?

10 THE COURT: The government? Yes.

11 MS. FLETCHER: Yes, your Honor.

12 The government moves to exclude the Speedy Trial Act
13 time. Your Honor, when your Honor was setting forth the
14 schedule, I understood the date to likely result in motions
15 being due on October 13, and so the government would move to
16 exclude Speedy Trial Act time between today's date and October
17 13 in the interests of justice to allow the government to
18 continue to produce discovery and the defense to contemplate
19 any motions, as well as to further any discussions with a
20 pretrial disposition.

21 THE COURT: All right. I will assume the only
22 objections to that are from whoever speaks now. Is there any
23 defendant who has objection to the exclusion of time?

24 All right. Hearing none, I hereby exclude time from
25 today until October 13, 2020. It is pursuant to 18 United

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1 States Code 3161(h)(7)(A). I do find the ends of justice
2 outweigh the interests of the public and the defendants in a
3 speedy trial. The purpose is for this considerable discovery
4 to be made and for the defense to analyze it and to make
5 whatever motions are appropriate as well as if the parties
6 choose for them to attempt to consensually resolve this. The
7 exclusion is from today until October 13, and let's set a
8 conference date -- a conference at that time, because I will
9 look at all the motions and we will see what's required. I
10 will get a sense of what's involved. We will do it October 13
11 at 2:30 p.m., next conference.

12 And, again, if you need me before then just let me
13 know.

14 All right, everybody. Is there anything else?

15 MS. FLETCHER: No, thank you, your Honor.

16 THE COURT: Everyone stay safe and we will all get
17 through this pandemic. Thank you, all.

18 COUNSEL: Thank you, your Honor.

19 COUNSEL: Thank you, Judge.

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